

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEAN FRANCIS ASPINWALL,

Petitioner,

vs.

PEOPLE OF STATE OF
CALIFORNIA,

Respondent.

No. C 14-3898 JSW (PR)

**ORDER TO SHOW CAUSE;
GRANTING LEAVE TO PROCEED IN
FORMA PAUPERIS**

(Dkt. 2)

INTRODUCTION

Petitioner, a prisoner of the State of California proceeding pro se, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court conviction. He has applied for leave to proceed in forma pauperis.

BACKGROUND

In 2012, a jury in Santa Clara County Superior Court found Petitioner guilty of assault with a deadly weapon and hit-and-run. The trial court sentenced him to a term of 4 years in state prison. The California Court of Appeal affirmed the judgment on appeal, and the California Supreme Court denied a petition for review.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a

1 person in custody pursuant to the judgment of a State court only on the ground that he is
 2 in custody in violation of the Constitution or laws or treaties of the United States.” 28
 3 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to
 4 show cause why the writ should not be granted, unless it appears from the application that
 5 the applicant or person detained is not entitled thereto.” *Id.* § 2243.

6 II. Legal Claims

7 As grounds for federal habeas relief, Petitioner claims that: (1) the admission of
 8 evidence of Petitioner’s prior offenses violated his right to due process; and (2) the trial
 9 court violated his right to due process by failing to instruct the jury on the defense of
 10 necessity. When liberally construed, these claims warrant a response from Respondent.

11 CONCLUSION

12 For the foregoing reasons and for good cause shown,

13 1. The Clerk shall serve a copy of this order and the petition, and all attachments
 14 thereto, on Respondent and Respondent's attorney, the Attorney General of the State of
 15 California. The Clerk also shall serve a copy of this order on Petitioner.

16 2. Respondent shall file with the Court and serve on Petitioner, within **ninety-one**
 17 **(91)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of
 18 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
 19 should not be granted. Respondent shall file with the answer and serve on Petitioner a
 20 copy of all portions of the state trial record that have been transcribed previously and that
 21 are relevant to a determination of the issues presented by the petition. If Petitioner wishes
 22 to respond to the answer, he shall do so by filing a traverse with the Court and serving it
 23 on Respondent within **twenty-eight (28)** days of the date the answer is filed.

24 3. Respondent may, within **ninety-one (91) days**, file a motion to dismiss on
 25 procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to
 26 Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion,
 27 Petitioner shall file with the Court and serve on Respondent an opposition or statement of
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1 non-opposition within **twenty-eight (28)** days of the date the motion is filed, and
2 Respondent shall file with the Court and serve on Petitioner a reply within **fourteen (14)**
3 days of the date any opposition is filed.

4 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
5 the Court informed of any change of address by filing a separate paper captioned "Notice
6 of Change of Address." He must comply with the Court's orders in a timely fashion.
7 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
8 to Federal Rule of Civil Procedure 41(b).

9 5. Petitioner's application to proceed in forma pauperis is GRANTED based on
10 Petitioner's lack of funds.

11 IT IS SO ORDERED.

12 DATED: October 7, 2014

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14 _____
15 JEFFREY S. WHITE
16 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DEAN F ASPINWALL,
Plaintiff,

Case Number: CV14-03898 JSW

CERTIFICATE OF SERVICE

v.

PEOPLE OF THE STATE OF CALIFORNIA
et al,


Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 7, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dean Francis Aspinwall AN-1341
Correctional Training Facility
Central
P.O. Box 689
Soledad, CA 93960

Dated: October 7, 2014


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk